

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 526

Introduced by Senator Fuller

February 26, 2015

An act to amend Section 18533 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, as amended, Fuller. Personal income taxes: ~~liabilities: proceeding for dissolution of marriage: joint returns: relief from liability.~~

~~The Personal Income Tax Law~~ Existing law generally provides that whenever a joint income tax return is filed by spouses or registered domestic partners the liability for the tax is joint and ~~several~~. Existing law allows a court in a proceeding for dissolution of marriage, under specified conditions, to revise the income tax liabilities of spouses or registered domestic partners. Under existing law, a court may not revise the income tax liabilities of spouses or registered domestic partners if the gross income reported on the joint return exceeds \$150,000 or if the liability of the relieved spouse or partner exceeds \$7,500. *several, and that the spouse or partner who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by the Personal Income Tax Law on that income. Existing law allows, under specified conditions, a court in a proceeding for dissolution of marriage or the Franchise Tax Board to revise the income tax liabilities of spouses or registered domestic partners, but prohibits revisions to relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse.*

~~This bill would state the intent of the Legislature to enact legislation to increase the gross income threshold and the tax liability thresholds under which a court would be allowed in a proceeding for dissolution of marriage, under specified conditions, to revise the income tax liabilities of spouses or registered domestic partners, and to index these threshold amounts to inflation, and to enumerate in the Family Code the requirements specified in the Revenue and Taxation Code pursuant to which a court may revise income tax liabilities in a proceeding for dissolution of marriage.~~

Existing income tax law allows, under procedures prescribed by the Franchise Tax Board, an individual who has made a joint return to elect to seek relief from liability for an understatement of tax or to limit the individual's liability of any tax deficiency. Existing income tax laws require an individual making those elections to be relieved of liability from tax if specified conditions are met, and requires that the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual as specified by law if, among other things, the individual meets the burden of proof as specified. Under existing income tax law, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency, and relief is not available to the individual under these procedures, the Franchise Tax Board is authorized to relieve the individual of that liability, as provided.

This bill would allow, for requests for relief received on and after January 1, 2016, when taking into account all the facts and circumstances, the fact that the individual's liability for any unpaid tax or deficiency has been revised under a judgment of dissolution of marriage to be a factor weighing in favor of relief from tax liability on income earned by or subject to the exclusive management and control of the individual, whether or not the individual was a victim of abuse at the time the return was filed or whether or not funds that would have been used to pay the tax or deficiency were misappropriated by the nonrequesting spouse.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 18533 of the Revenue and Taxation Code*
2 *is amended to read:*

3 18533. (a) (1) Notwithstanding subdivision (a) and the first
4 sentence of subdivision (b) of Section 19006:

5 (A) An individual who has made a joint return may elect to seek
6 relief under the procedures prescribed under subdivision (b), and

7 (B) If the individual is eligible to elect the application of
8 subdivision (c), the individual may, in addition to any election
9 under subparagraph (A), elect to limit the individual's liability for
10 any deficiency with respect to the joint return in the manner
11 prescribed under subdivision (c).

12 (2) Any determination under this section shall be made without
13 regard to community property laws.

14 (b) (1) Under procedures prescribed by the Franchise Tax
15 Board, if—

16 (A) A joint return has been made under this chapter for a
17 taxable year,

18 (B) On that return there is an understatement of tax attributable
19 to erroneous items of one individual filing the joint return,

20 (C) The other individual filing the joint return establishes that
21 in signing the return he or she did not know of, and had no reason
22 to know of, that understatement,

23 (D) Taking into account all facts and circumstances, it is
24 inequitable to hold the other individual liable for the deficiency
25 in tax for that taxable year attributable to that understatement,
26 and

27 (E) The other individual elects (in the form and manner as the
28 Franchise Tax Board may prescribe) the benefits of this
29 subdivision not later than the date that is two years after the date
30 the Franchise Tax Board has begun collection activities with
31 respect to the individual making the election,

32 then the other individual shall be relieved of liability for tax
33 (including interest, penalties, and other amounts) for that taxable
34 year to the extent that the liability is attributable to that
35 understatement.

36 (2) If an individual who, but for subparagraph (C) of paragraph
37 (1), would be relieved of liability under paragraph (1), establishes
38 that in signing the return the individual did not know, and had no

1 reason to know, the extent of the understatement, then the
2 individual shall be relieved of liability for tax (including interest,
3 penalties, and other amounts) for that taxable year to the extent
4 that the liability is attributable to the portion of the understatement
5 of which that individual did not know and had no reason to know.

6 (3) For purposes of this subdivision, the term “understatement”
7 has the meaning given to that term by Section 6662(d)(2)(A) of
8 the Internal Revenue Code.

9 (c) (1) Except as provided in this subdivision, if an individual
10 who has made a joint return for any taxable year elects the
11 application of this subdivision, the individual’s liability for any
12 deficiency that is assessed with respect to the return may not exceed
13 the portion of the deficiency properly allocable to the individual
14 under subdivision (d).

15 (2) Except as provided in clause (ii) of subparagraph (A) of
16 paragraph (3) or subparagraph (C) of paragraph (3), each individual
17 who elects the application of this subdivision shall have the burden
18 of proof with respect to establishing the portion of any deficiency
19 allocable to that individual.

20 (3) (A) (i) An individual shall only be eligible to elect the
21 application of this subdivision if—

22 (I) At the time the election is filed, that individual is no longer
23 married to, or is legally separated from, the individual with whom
24 that individual filed the joint return to which the election relates,
25 or

26 (II) That individual was not a member of the same household
27 as the individual with whom the joint return was filed at any time
28 during the 12-month period ending on the date the election is filed.

29 (ii) If the Franchise Tax Board demonstrates that assets were
30 transferred between individuals filing a joint return as part of a
31 fraudulent scheme by those individuals, an election under this
32 subdivision by either individual shall be invalid (and subdivision
33 (a) and the first sentence of subdivision (b) of Section 19006 shall
34 apply to the joint return).

35 (B) An election under this subdivision for any taxable year shall
36 be made not later than two years after the date on which the
37 Franchise Tax Board has begun collection activities with respect
38 to the individual making the election.

39 (C) If the Franchise Tax Board demonstrates that an individual
40 making an election under this subdivision had actual knowledge,

1 at the time the individual signed the return, of any item giving rise
2 to a deficiency (or portion thereof) that is not allocable to the
3 individual under subdivision (d), that election does not apply to
4 that deficiency (or portion). This subparagraph does not apply
5 where the individual with actual knowledge establishes that the
6 individual signed the return under duress.

7 (4) (A) Notwithstanding any other provision of this subdivision,
8 the portion of the deficiency for which the individual electing the
9 application of this subdivision is liable (without regard to this
10 paragraph) shall be increased by the value of any disqualified asset
11 transferred to the individual.

12 (B) For purposes of this paragraph—

13 (i) The term “disqualified asset” means any property or right to
14 property transferred to an individual making the election under
15 this subdivision with respect to a joint return by the other individual
16 filing the joint return if the principal purpose of the transfer was
17 the avoidance of tax or payment of tax.

18 (ii) (I) For purposes of clause (i), except as provided in
19 subclause (II), any transfer that is made after the date that is one
20 year before the date on which the first notice of proposed
21 assessment under Article 3 (commencing with Section 19031) of
22 Chapter 4 is sent shall be presumed to have as its principal purpose
23 the avoidance of tax or payment of tax.

24 (II) Subclause (I) does not apply to any transfer pursuant to a
25 decree of divorce or separate maintenance or a written instrument
26 incident to that decree or to any transfer that an individual
27 establishes did not have as its principal purpose the avoidance of
28 tax or payment of tax.

29 (d) For purposes of subdivision (c)—

30 (1) The portion of any deficiency on a joint return allocated to
31 an individual shall be the amount that bears the same ratio to the
32 deficiency as the net amount of items taken into account in
33 computing the deficiency and allocable to the individual under
34 paragraph (3) bears to the net amount of all items taken into
35 account in computing the deficiency.

36 (2) If a deficiency (or portion thereof) is attributable to—

37 (A) The disallowance of a credit, or

38 (B) Any tax (other than tax imposed by Section 17041 or 17062)
39 required to be included with the joint return, and the item is
40 allocated to one individual under paragraph (3), that deficiency

(or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply, or who requests equitable relief under subdivision (f)—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) or requesting equitable relief under subdivision (f) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint

1 return appeals the determination to the board as provided in Section
2 19045.

3 (iii) The individual making the election under subdivision (b)
4 or (c) or requesting equitable relief under subdivision (f) may
5 appeal the determination of the Franchise Tax Board of the
6 appropriate relief available to the individual under this section if
7 that appeal is filed during the 30-day period prescribed in clause
8 (ii) and the appeal shall be treated as an appeal to the board under
9 Section 19045. Notwithstanding the preceding sentence, the
10 individual making the election under subdivision (b) or (c) or
11 requesting equitable relief under subdivision (f) may appeal to the
12 board at any time after the date that is six months after the date
13 the election is filed with the Franchise Tax Board and before the
14 close of the 30-day period prescribed in clause (ii).

15 (B) Except as otherwise provided in Section 19081 or 19082,
16 no levy or proceeding in court shall be made, begun, or prosecuted
17 against the individual making an election under subdivision (b) or
18 (c) or requesting equitable relief under subdivision (f), for
19 collection of any assessment to which the election relates until the
20 expiration of the 30-day period described in clause (ii) of
21 subparagraph (A), or, if an appeal to the board has been filed under
22 clause (iii) or Section 19045, until the decision of the board has
23 become final.

24 (2) The running of the period of limitations in Section 19371
25 on the collection of the assessment to which the petition under
26 subparagraph (A) of paragraph (1) relates shall be suspended for
27 the period during which the Franchise Tax Board is prohibited by
28 subparagraph (B) of paragraph (1) from collecting by levy or a
29 proceeding in court and for 60 days thereafter.

30 (3) (A) Except as provided in subparagraph (B), notwithstanding
31 any other law or rule of law (other than Section 19306 and Article
32 6 (commencing with Section 19441) of Chapter 6), a credit or
33 refund shall be allowed or made to the extent attributable to the
34 application of this section.

35 (B) In the case of any election under subdivision (b) or (c) or
36 request for equitable relief under subdivision (f), if a decision of
37 the board in any prior proceeding for the same taxable year has
38 become final, that decision shall be conclusive except with respect
39 to the qualification of the individual for relief that was not an issue
40 in that proceeding. The exception contained in the preceding

1 sentence does not apply if the board determines that the individual
2 participated meaningfully in the prior proceeding.

3 (C) No credit or refund shall be allowed as a result of an election
4 under subdivision (c).

5 (f) (1) Under procedures prescribed by the Franchise Tax
6 Board, if taking into account all the facts and circumstances, it is
7 inequitable to hold the individual liable for any unpaid tax or any
8 deficiency (or any portion of either), and relief is not available to
9 the individual under subdivision (b) or (c), the Franchise Tax Board
10 may relieve the individual of that liability.

11 (2) *Notwithstanding any other law, when taking into account*
12 *all the facts and circumstances in paragraph (1), the fact that the*
13 *individual's liability for any unpaid tax or deficiency has been*
14 *revised under a judgment of dissolution of marriage may be a*
15 *factor weighing in favor of relief from tax liability on income*
16 *earned by or subject to the exclusive management and control of*
17 *the individual, whether or not the individual was a victim of abuse*
18 *at the time the return was filed or whether or not funds that would*
19 *have been used to pay the tax or deficiency were misappropriated*
20 *by the nonrequesting spouse.*

21 (g) (1) The Franchise Tax Board may prescribe regulations
22 providing methods for allocation of items other than the methods
23 under paragraph (3) of subdivision (d).

24 (2) It is the intent of the Legislature that, in construing this
25 section and any other sections that are specifically cross-referenced
26 in this section, any regulations that may be promulgated by the
27 Secretary of the Treasury under Section 6015 of the Internal
28 Revenue Code shall apply to the extent that those regulations do
29 not conflict with this section or with any regulations that may be
30 promulgated by the Franchise Tax Board.

31 (h) The amendments made by Section 5 of Chapter 931 of the
32 Statutes of 1999 shall apply to any liability for tax arising after
33 October 10, 1999, and any liability for tax arising on or before that
34 date but remaining unpaid as of that date.

35 (i) (1) An individual who has made a joint return and has been
36 granted relief under Section 6015 of the Internal Revenue Code,
37 relating to joint and several liability with respect to a federal joint
38 income tax return, shall be eligible for relief under this section if
39 all of the following conditions are satisfied:

40 (A) The individual requests relief under this section.

1 (B) The facts and circumstances that apply to the understatement
2 and liabilities for which the relief is requested are the same facts
3 and circumstances that applied to the understatement and liabilities
4 for which that individual was granted relief under Section 6015
5 of the Internal Revenue Code.

6 (C) The individual requesting relief under this subdivision
7 furnishes the Franchise Tax Board with a copy of the federal
8 determination granting that individual relief under Section 6015
9 of the Internal Revenue Code. If the federal determination does
10 not clearly identify the issues and liabilities for which the individual
11 was granted relief under Section 6015 of the Internal Revenue
12 Code, the Franchise Tax Board may request, from the individual
13 requesting relief, any supporting documentation reasonably
14 necessary to substantiate that the issues and liabilities for which
15 relief is requested under this section are the same as the issues and
16 liabilities for which the individual received relief under Section
17 6015 of the Internal Revenue Code.

18 (2) This subdivision does not apply if, prior to the expiration of
19 the 30-day period described in clause (i) of subparagraph (A) of
20 paragraph (1) of subdivision (e), the other individual that filed the
21 joint return for which the relief is requested under this subdivision
22 submits information to the Franchise Tax Board that indicates that
23 relief should not be granted. For purposes of this paragraph,
24 “information that indicates that relief should not be granted” is
25 limited to the following:

26 (A) Information that indicates that the facts and circumstances
27 that apply to the understatement and liabilities for which the relief
28 is requested are not the same facts and circumstances that applied
29 to the understatement and liabilities for which that individual was
30 granted relief under Section 6015 of the Internal Revenue Code.

31 (B) Information that indicates that there has not been a federal
32 determination granting relief under Section 6015 of the Internal
33 Revenue Code or that the federal determination granting relief
34 under Section 6015 of the Internal Revenue Code has been
35 modified, altered, withdrawn, canceled, or rescinded.

36 (C) Information indicating that the other individual, as described
37 in the first sentence of this paragraph, did not have the opportunity
38 to participate, within the meaning of Section 6015 of the Internal
39 Revenue Code and the regulations thereunder, in the federal

1 administrative or judicial proceeding that resulted in relief under
2 Section 6015 of the Internal Revenue Code.

3 (j) If, prior to the date the Franchise Tax Board issues its
4 determination with respect to a request for relief under this section,
5 the individual requesting relief demonstrates to the Franchise Tax
6 Board that a request for relief has been filed with the Internal
7 Revenue Service pursuant to Section 6015 of the Internal Revenue
8 Code and demonstrates that the request for relief involves the same
9 facts and circumstances as the request for relief that is pending
10 before the Franchise Tax Board, the Franchise Tax Board may not
11 deny relief with respect to that request, in whole or in part, until
12 federal action on the request for relief under Section 6015 of the
13 Internal Revenue Code is final.

14 (k) An individual may not be granted relief under this section
15 if a court has revised the tax liability in a proceeding for dissolution
16 of the marriage in accordance with subdivision (b) of Section
17 19006.

18 (l) Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code shall not apply to
20 any procedure or rule prescribed by the Franchise Tax Board
21 pursuant to this section.

22 (m) (1) This section shall become operative on January 1, 2009.

23 (2) The provisions of subdivision (i) and (j), as amended by the
24 act adding this paragraph, shall apply on and after January 1, 2009.

25 (3) The amendments made to subdivisions (e), (g), and (h) by
26 *Chapter 318 of the Statutes of 2010* shall apply to requests for
27 relief received on or after the effective date of the act adding this
28 paragraph. *January 1, 2010.*

29 (4) *The amendments made by the act adding this paragraph*
30 *shall apply to requests for relief received on or after January 1,*
31 *2016.*

32 ~~SECTION 1. It is the intent of the Legislature to enact~~
33 ~~legislation to amend Section 19006 of the Revenue and Taxation~~
34 ~~Code to increase the gross income threshold and the tax liability~~
35 ~~thresholds under which a court is allowed in a proceeding for~~
36 ~~dissolution of marriage, under specified conditions, to revise the~~
37 ~~income tax liabilities of spouses or registered domestic partners,~~
38 ~~and to index these threshold amounts to inflation, and to amend~~
39 ~~Section 2628 of the Family Code to enumerate the requirements~~
40 ~~that would be specified in Section 19006 of the Revenue and~~

- 1 ~~Taxation Code pursuant to which a court may revise income tax~~
- 2 ~~liabilities in a proceeding for dissolution of marriage.~~

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